

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

BRIEF FOR APPELLEE

IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 12,758

MARIE NATVIG, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

APPEAL FROM THE JUDGMENT OF THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

LEO A. ROVER,

United States Attorney.

J. FRANK CUNNINGHAM, —

*Attorney, Criminal Division,
Department of Justice.*

MICHAEL J. ANTONELLIS, ✓

*Attorney, Criminal Division,
Department of Justice.*

*United States Court of Appeals
For the
District of Columbia Circuit*

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Joseph W. Stewart
CLERK

QUESTIONS PRESENTED

In the opinion of the appellee, the questions are:

1. Whether, in a case in which the accused is charged with perjuringly denying that she previously stated to government employees that she had been a member of the Communist Party and, as such a member, had known and consorted with a named person, it is error for the trial judge to deny a motion in advance of trial for change of venue upon the unsupported allegations that the jury panel will consist of a disproportionate number of government employees, that government employees are subject to security checks and peremptory discharge if any question of loyalty arises, and that the accused received much adverse publicity in the local newspapers, where no showing is made to the trial judge's satisfaction that she could not obtain a fair and impartial trial in the District of Columbia.

2. Whether the trial court erred in denying appellant's oral motion for continuance on the day of trial, based upon the unavailability of an ill witness who was under subpoena by both sides, where appellant did not know and made no offer of proof as to what the witness' testimony would be, where it appeared obvious that the witness' testimony would aid the prosecution and be adverse to the accused, where the appellant failed to exercise her right to take the witness' deposition, and where the appellant was convicted and sentenced on two counts as to which the witness could not have given relevant testimony.

3. Whether the trial judge, on the issue of credibility of government witnesses, erroneously limited appellant on cross-examination of such witnesses from inquiring into their knowledge of what investigations had been conducted by the FBI and FCC to verify appellant's past membership in the Communist Party, where the truth of such membership was not in issue and where the inquiry did not appear to be probative of the witness' credibility.

4. Whether the trial judge erred in making a preliminary ruling that if witnesses who had first testified for the Government were thereafter called by the defense for direct

examination on its case in chief, the defense would not be permitted to cross-examine such witnesses unless hostility were first shown, and where when thereafter called by the defense, such witnesses did not evidence hostility but answered all proper questions fully and without reluctance or evasion.

5(a). Whether, on the issue of whether the accused had perjurally denied *stating* she had been a member of the Communist Party, the trial judge erred in excluding from evidence investigative reports of the FBI and testimony concerning FCC investigations, offered to prove that appellant had not in fact been a Communist Party member.

(b). Whether the trial judge erred, on the issue of whether appellant willfully gave false testimony before the FCC in February, 1955, in excluding evidence of appellant's experiences in October, 1954, unrelated to her subsequent mental condition, where no evidence was adduced that her mental condition in February, 1955, was in fact defective.

6. Whether the trial judge erred because of isolated remarks made in the jury's presence in the course of a nine-day trial to the effect that the defense was "wasting time," that it was attempting to adduce "unimportant" and "irrelevant" evidence, and that there was no impropriety in government attorneys talking to appellant in the absence of her counsel, at her request, after the alleged perjury was committed but before indictment, when on one occasion her counsel was present, on another occasion she was not represented by counsel, and on a third occasion she was unable to get in touch with her counsel and insisted on talking to government attorneys not connected with the criminal proceedings subsequently instituted.

7. Whether the trial judge's charge was erroneously "unbalanced" and prejudicial because of more extensive comments made on the Government's evidence than on that of the accused and because of the Court's failure to comment upon the testimony of a particular defense witness when his failure to do so was mentioned to him after the principal charge was delivered, and in which charge he did comment upon other similar testimony of defense witnesses.

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BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

On March 7, 1955, appellant was charged by indictment, in nine counts, with having committed perjury, in violation of 18 U. S. C. 1621, in sworn testimony given by her on February 9 and 11, 1955, before a hearing examiner for the Federal Communications Commission,¹ who was then conducting an official hearing into a matter entitled "In re: Application of Dispatch, Inc., Erie, Pennsylvania, for renewal of license of television station WICU, docket number 11,048, file No. BRCT-42." (J. App. 1).

Upon appellant's motion, Counts Two and Five were dismissed before trial. Trial of the case began May 3, 1955, and during the course of trial the Court below, on motion of

¹ Hereinafter called "FCC."

the prosecution, dismissed Counts One, Three, Six, and Nine (Tr. 894, 896, 374). Counts Four, Seven, and Eight were submitted to the jury on May 16, 1955, and a verdict of guilty was returned on all such counts.

The counts on which appellant stands convicted allege in substance that appellant perjurally testified (4) that at a September 19, 1954 meeting with Walter R. Powell, Jr., Thomas B. Fitzpatrick, and Robert D. J. Leahy, employees of the FCC, she did not tell them she had been a member of the Communist Party, that she had known Edward Lamb in that connection, and that she had, in fact, consorted with Lamb; (7) that at meetings on September 15 and 21, 1954, with Edward J. Powers, Special Agent in Charge, Miami Field Office, Federal Bureau of Investigation,² she did not tell Powers that she had been a member of the Communist Party, that she knew Edward Lamb in that capacity, and that she had, in fact, consorted with Lamb; and (8) that at the meeting with Powers on September 15, 1954, she did not state that she had been a member of the Communist Party (J. App. 1).

On June 20, 1955, appellant was sentenced to be imprisoned for a period of from eight to twenty-four months (J. App. 17-18), and from the judgment of conviction this appeal is prosecuted.

The Evidence

On September 15, 1954, the FCC began taking testimony in an official hearing in Washington, D. C., on the question of whether or not a television license should be re-issued to Dispatch, Inc., Erie, Pennsylvania, owned by Edward Oliver Lamb. On that same day, September 15, 1954, appellant appeared at the field office of the FBI in Miami, Florida, and after introducing herself as "Mary Jones" to Special Agent in Charge Edward J. Powers, appellant told Powers that she had just read a newspaper article about the FCC hearings. The appellant stated that she was highly concerned, that she had known Lamb as a member of the Communist Party in Ohio during the 1930's when she also had been a

² Hereinafter called "FBI."

member, and that she felt an obligation as a loyal citizen to report the facts known to her, because she knew the communications industry was a target of the Communist Party (Tr. 140-41).

Mr. Powers called in Charles B. Schildecker, Special Agent of the FBI, and appellant talked to them jointly for a period of approximately twenty-five minutes (Tr. 141). Agents Powers and Schildecker testified that during this discussion appellant told them she had been a member of the Communist Party in Ohio from 1934 to 1936; that her party name was Minnie Johnson; that she had known Edward Oliver Lamb as a member of the Communist Party; that she had attended Communist Party strategy meetings in Columbus, Ohio, with Lamb; that on at least one occasion she and Lamb had registered at a hotel in Columbus, Ohio, as man and wife; that in 1936 she attended the Farmer Labor Party Convention in Chicago, Illinois, with Lamb; and that a few months later she went to Washington, D. C., with Lamb to attend the Founding Convention of the National Lawyers Guild (Tr. 142-43; 234-40). Mrs. Natvig asked Powers for advice on whether she should testify before the FCC hearing, and Powers told her that was a decision she herself would have to make (Tr. 167). Mrs. Natvig volunteered that she would be willing to testify about these matters, provided her identity could be kept confidential (Tr. 142, 169). At the close of the interview Mrs. Natvig gave Agent Schildecker her true name (Tr. 115, 163, 299).

By teletype of September 15, 1954, Powers informed FBI headquarters in Washington of the information volunteered by Mrs. Natvig (Tr. 193). On September 17, 1954, he received a request from Washington to ascertain whether appellant would be willing to talk to a representative of the FCC (Tr. 168). Upon inquiry, Mrs. Natvig stated she would be willing to talk to an FCC representative, and a teletype to that effect was sent to FBI headquarters in Washington (Tr. 168-69).

On September 17, 1954, Robert D. J. Leahy, an FCC accountant assigned to investigative duties on the Lamb hear-

ing, telephoned appellant in Florida, known to him as "Mary Jones," and asked if he could talk to her about Lamb. The appellant stated she would be willing to disclose the information in her possession and, in preference to having Leahy come to Miami to talk to her, elected to come to Washington and talk with FCC representatives (Tr. 336-337).

Pursuant to travel arrangements made by Leahy at government expense, the appellant came to Washington on Sunday, September 19, 1954, and met with Walter R. Powell, Jr., Thomas B. Fitzpatrick, and Leahy in Powell's office. (Powell held the position of Chief, Renewal and Transfer Division, Broadcast Bureau of the FCC, and Fitzpatrick was a trial attorney of the Broadcast Bureau. Powell and Fitzpatrick were the attorneys representing the Government at the FCC hearing). For approximately four hours the appellant related to Powell, Fitzpatrick, and Leahy her experiences as a member of the Communist Party and her associations with Lamb (Tr. 337-41). Fitzpatrick and Leahy testified that appellant told them she had been a party member in Ohio from 1934 to 1937; that she carried a party card for approximately one month; that she considered Lamb to be a Communist because of his association with and his activities in the party; that she had attended numerous party meetings in Cleveland, Ohio, as well as in Columbus, Chicago, and Washington. She stated that the meetings in Columbus were held at the Deschler-Waller Hotel; that Lamb was present at meetings in Columbus, Chicago, and Washington; that the purpose of these meetings was to plan party strategy, such as the recruiting of attractive young girls to distribute party literature to the sailors in the Great Lakes region and to the soldiers at Camp Perry; that at another meeting they discussed the role of the Communist Party in laying the foundation for the National Lawyers Guild; and at another meeting they discussed the position the Communist Party should take in the Farmer Labor Conference. The appellant said that at one meeting in Columbus she consorted with Lamb and believed they registered at the hotel as man and wife. At the meeting in

Washington, Mrs. Natvig stated that Lamb actively discussed the plans for the Communist Party's position in the National Lawyers Guild when it was founded. She said she and Lamb were present at a meeting when the sovietization of China was discussed (Tr. 344-47; 510-17).

At the conclusion of appellant's statement, Powell informed her that the information she had given was extremely important to the case then pending before the FCC and expressed the hope that she would become a willing witness. Mrs. Natvig replied that she recognized her duty, but did not wish to do anything that would injure her family or her business clients. Powell asked her to give some consideration to becoming a witness, and appellant agreed that he could call her in three days, September 22, 1954, for her decision. Mrs. Natvig, still known to the FCC representatives as "Mary Jones," then left the office and returned to Miami (Tr. 347-48; 517-18).

On Tuesday, September 21, 1954, Special Agents Powers and Schildecker met with Mrs. Natvig in Miami and, in a discussion of some five or six hours' duration, questioned her in greater detail about her experiences and associations in the Communist Party and her relationship with Edward Oliver Lamb. Agents Powers and Schildecker testified that at this interview Mrs. Natvig volunteered more specific information about the various Communist Party meetings she had attended during 1934-37, the individuals present, and her associations with Lamb at the meetings, as well as details about her personal background (Tr. 143-46; 242-46). At this interview the appellant stated she would be willing to testify at the FCC hearing if her identity could be kept secret, but that she was highly concerned about embarrassing her children and relatives, who were not aware of this episode in her life (Tr. 146-47; 246).

As agreed, Powell, Fitzpatrick, and Leahy, on joint telephone extensions, called Mrs. Natvig on September 22, 1954, to see if she had reached a decision about testifying. The appellant stated that she had refreshed herself considerably since returning to Miami and had gone to the FBI and had given them additional information. Powell asked if she

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As agreed, Powell, Fitzpatrick, and Leahy, on joint telephone extensions, called Mrs. Natvig on September 22, 1954, to see if she had reached a decision about testifying. The appellant stated that she had refreshed herself considerably since returning to Miami and had gone to the FBI and had given them additional information. Powell asked if she

would come up and talk to him and his associates again in Washington, and she said she had not yet had an opportunity to talk to her children. Mrs. Natvig asked whether, if she came up, she could see her children before she testified, and Fitzpatrick replied that she could. Leahy then informed Mrs. Natvig that he would arrange government transportation for her for the following day (Tr. 350-51; 519-20).

On Thursday, September 23, 1954, the appellant again met with Powell, Fitzpatrick, and Leahy. Joseph M. Kittner, Assistant Chief, Broadcast Bureau, was also present at this meeting. During the discussion, Powell served upon Mrs. Natvig a "Jane Doe" subpoena calling for her appearance as a witness in the FCC hearing (Tr. 351-56; 520-25).

Following the service of the subpoena, except for a trip to New York City to see her children, appellant remained in Washington as a potential government witness. On October 6, 1954, the appellant testified for the Government at the FCC hearing, her direct testimony consuming approximately one and one-half hours, and she was thereafter cross-examined by Lamb's counsel intermittently for seven days, this phase of her testimony being concluded on October 25, 1954 (Tr. 551-52), after which she returned to Miami, Florida. The hearing continued on into 1955.

On February 9, 1955, Mrs. Natvig was recalled to the stand by Lamb's counsel in continuation of cross-examination. She then testified that her prior October testimony was false and that she had been coerced by Powell to give false testimony, that Powell has induced her to testify she had been a Communist by saying he had information from the Cleveland Police Department to the effect that she had been a Communist, and that if she had been a Communist and said she was not, it would be perjury. (This testimony was assigned as perjury in Counts One and Two of the indictment, which counts were subsequently dismissed.) During the subsequent examination by Kittner for the FCC on February 9 and 11, 1955,

appellant testified, among other things, to the matters assigned as perjury in the remaining counts of the indictment.

At the trial of the perjury case below, the Government called ten witnesses on its case in chief, two of whom were court reporters who testified to formal matters. Counts Seven and Eight were proved by the testimony of Agents Powers (Tr. 114-233) and Schildecker (Tr. 234-321). Count Four was proved by the testimony of Leahy (Tr. 335-500) and Fitzpatrick (Tr. 504-25; 547-657). Additionally Kittner (Tr. 799-805) and Edward J. Brown (Tr. 854-70), trial attorney for the FCC, testified that on February 25, 1955, two weeks after appellant's perjurious testimony was given, they met with appellant, at her insistence, and she told them that Powell had not coerced her in any way and admitted that her testimony of February 9 and 11, 1955, was false. They also testified that at appellant's request they talked with her and her attorney on March 2, 1955, at which time she made similar admissions. Rex A. Collings, Chief, General Crimes Section, Criminal Division (Tr. 729-37), and John F. Reilly, Head of the Espionage and Treason Unit, Subversive Activities Section, Internal Security Division, Department of Justice (Tr. 721-22), testified that, at appellant's request, they had a discussion with her in Collings' office on February 23, 1955, at which time the appellant stated her testimony of February 9 and 11, 1955, was false and that she had not been coerced by Powell to give her original testimony before the FCC in October, 1954.

Thereafter, on March 7, 1955, the subject indictment was returned against appellant.

STATUTES AND RULES INVOLVED

18 U.S.C. § 1621:

Whoever, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declara-

tion, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall, except as otherwise expressly provided by law, be fined not more than \$2,000 or imprisoned not more than five years, or both. (June 25, 1948, ch. 645, § 1, 62 Stat. 773.)

11 D.C. Code § 1420 (1951 Ed.):

All executive and judicial officers of the Government of the United States and of the District of Columbia, all officers and enlisted men of the Army, Navy, Marine Corps, and Coast Guard of the United States in active service, those connected with the police and fire departments of the United States and of the District of Columbia, counselors and attorneys-at-law in actual practice, ministers of the gospel and clergymen of every denomination, practicing physicians and surgeons, keepers of hospitals, asylums, almshouses, or other charitable institutions created by or under the laws relating to the District of Columbia, captains and masters and other persons employed on vessels navigating the waters of the District of Columbia shall be exempt from jury duty, and their names shall not be placed on the jury lists.

All other persons, otherwise qualified according to law whether employed in the service of the government of the United States or of the District of Columbia, all officers and enlisted men of the National Guard of the District of Columbia, both active and retired, all officers and enlisted men of the Military, Naval, Marine, and Coast Guard Reserve Corps of the United States, all notaries public, all postmasters and those who are the recipients or beneficiaries of a pension or other gratuity from the Federal or District Government or who have contracts with the United States or the District of Columbia, shall be qualified to serve as jurors

in the District of Columbia and shall not be exempt from such service: *Provided*, That employees of Government of the United States or of the District of Columbia in active service who are called upon to sit on juries shall not be paid for such jury service but their salary shall not be diminished during their term of service by virtue of such service, nor shall such period of service be deducted from any leave of absence authorized by law. (Mar. 3, 1901, 31 Stat. 1224, ch. 854, § 217; Feb. 18, 1909, 35 Stat. 636, ch. 146, § 73; Aug. 22, 1935, 49 Stat. 682, ch. 605.)

Rule 21 (a), F.R. Crim. P.:

The court upon motion of the defendant shall transfer the proceeding as to him to another district or division if the court is satisfied that there exists in the district or division where the prosecution is pending so great a prejudice against the defendant that he cannot obtain a fair and impartial trial in that district or division.

Canon 9, Canon of Legal Ethics, adopted by American Bar Association, 1947.

A lawyer should not in any way communicate upon the subject of controversy with a party represented by counsel; much less should he undertake to negotiate or compromise the matter with him, but should deal only with his counsel. It is incumbent upon the lawyer most particularly to avoid everything that may tend to mislead a party not represented by counsel, and he should not undertake to advise him as to the law.

SUMMARY OF ARGUMENT

I.

Before trial, appellant filed a motion for change of venue, with the request that the trial judge take judicial knowledge "of the fact that most government workers are subject to security checks; and are subject to more or less

preemptory firing if any question of loyalty arises." Appellant also alleged in her motion that the accused had received much adverse publicity in the local newspapers. The trial judge denied the motion on the ground that he was not satisfied so great a prejudice existed in the District of Columbia that appellant could not obtain a fair and impartial trial. The appellee contends that the ruling on a motion for change of venue is left largely to the discretion of the trial judge, and that in this instance his discretion was not abused. Rule 21, F.R. Crim. P. makes it evident that an accused is entitled to a change of venue only where the trial judge is satisfied that he cannot obtain a fair trial where the indictment is pending. No evidence was offered to show that a fair trial could not be obtained by appellant in the District of Columbia. Statutory provisions in this District make government employees competent jurors, and decisions of this Court and of the Supreme Court hold that bias and prejudice is not to be inferred merely because prospective jurors are government employees. There is no allegation or reason to believe the appellant was not tried by a fair and impartial jury. It is therefore submitted that the trial court's ruling should be affirmed.

II.

On the morning of trial appellant moved for a continuance on the ground that an important witness was ill and could not attend trial. The witness was under subpoena by both sides, but was a key government witness without whom the proof of some counts was expected to be most difficult. At the trial judge's instructions, the witness was promptly examined by an independent physician who concurred with the witness' doctor that the witness could not safely testify at that time without endangering his health, but that he might be able to testify in three or four months if his condition continued to improve. Defense counsel made no offer of proof as to what the witness' testimony would be and admitted that he would be a "government witness" and "hostile" to the defense. The de-

fense claimed that his absence would damage its case, because the witness knew more about the issues than anyone else, except the defendant, and that it desired to cross-examine him relative to an affidavit he had filed with the FCC in which it was alleged he had admitted "correcting" some of the appellant's statements to him. The Government offered the affidavit in evidence, which was objected to by the defense. The Government contends that since there was no offer of proof as to what the witness' testimony would be, and since his absence would hurt the Government more than the defense, the continuance was properly denied. There was ultimately a dismissal of all counts except one as to which he could have testified, and in view of the conviction on two counts as to which he could not have testified, and the general sentence on all counts, the appellant could not have been prejudiced by his absence.

III.

The prosecution placed on the stand FBI agents and FCC attorneys who testified to their knowledge of appellant's perjurious denial that she had not stated to them that she had been a member of the Communist Party and, as such a member, had known and consorted with Edward Lamb. Appellant, under the guise of attacking their credibility, sought to cross-examine the witnesses about their knowledge of FBI and FCC investigations into the truth of appellant's statements. It was appellant's theory that if investigations failed to confirm appellant's statements, and the witnesses were aware of the results of such investigations but, nevertheless, "presented" her as a witness, their credibility would be affected. The trial judge prohibited this line of inquiry, which is assigned as error. Appellant's argument implies an admission that the statements perjurally denied were in fact made by appellant, but that she should not be convicted because the witnesses to the perjury acted improperly. The Government contends that the trial judge's ruling was proper because the investigations made involved confidential information which should not be divulged in the absence of strong

reasons, the information developed by such investigations would be pure hearsay, not necessarily reliable, and would not attribute "knowledge" of the subject matter to the reader of such reports. The FBI witnesses did not "present" appellant as a witness. The scope of cross-examination on collateral matters affecting credibility is discretionary with the trial judge. It is submitted that the trial judge's discretion was not abused in this instance.

IV.

The trial judge ruled that if the defense on its case in chief called for direct examination government employees who had previously testified for the prosecution, it could not cross-examine such witnesses unless hostility were first shown. The appellee contends this ruling was correct. When called, defense counsel was permitted to ask leading questions of such witnesses, and no complaint is made that the witnesses were hostile, evasive, or reluctant. No showing is made that appellant was prejudiced by the ruling.

V.

A. Defense counsel, without knowing their contents or attempting to show their competence, offered in evidence some unseen FBI reports to prove that appellant had not in fact been a Communist. Defense counsel also attempted to cross-examine prosecution witnesses as to whether they knew of reports that appellant had not been a Communist. Such line of inquiry was prohibited by the trial judge. The Government asserts the Court's ruling was proper, because the evidence was incompetent for the purpose intended and it was irrelevant to the issue. Hearsay statements in investigative reports do not constitute competent evidence of the truth of the facts reported. While the Government most emphatically does not admit that the evidence would have disproved appellant's Communist Party membership, it does contend that the evidence would have confused the issues. The issue was whether appellant had perjurally denied *stating* she had been such a

member, not whether she had perjuriously denied *being* a member.

B. Appellant contended that at the time the alleged perjurious statements were made, she was mentally incapable of forming a willful intent to falsify. In support of this contention, evidence was offered that four months prior to her alleged perjurious testimony she was accompanied to the hearing room of the FCC, to meals, and on trips, by employees of the FCC. Some of this evidence was admitted without objection and some was excluded by the trial judge as having no probative value on the issue, but with the assurance that evidence of her mental condition around the time of her alleged perjury would be received. Appellant did not take the stand. No competent evidence was offered that at the time the perjurious statements were made appellant was incapable of forming a willful intent to falsify. The Government contends the trial court's exclusion of the evidence involved was correct as it was obviously incompetent and irrelevant.

VI.

Appellant contends the trial judge erred in making isolated remarks during the nine-day trial to the effect that the defense was presenting "unimportant" or "irrelevant" matters, that it was "wasting time," and that he saw no impropriety in a government attorney talking to appellant at her insistence in the absence of her counsel, prior to the indictment in the case. The Government contends that the remarks of the trial judge were not improper and were most appropriate under the circumstances provoked by defense counsel. In the instances complained of, appellant had talked to certain government attorneys, pursuant to her request, at times when she was not represented by counsel, at times when her counsel was present, and at times when her counsel was not available. At no such time was any formal charge pending against her. These attorneys had repeatedly advised appellant to obtain counsel. We submit the trial judge's remarks were not erroneous or prejudicial.

VII.

Appellant claims that the trial judge's charge contained more extensive comments on the Government's evidence than on that of the defense, and that the judge failed to comment upon the testimony of two defense witnesses. The trial judge's comments were fair, impartial, and unbiased. The jury was instructed that it was the sole judge of the facts and that the Court's comments were not binding on it, but that the comments were to be accorded only such weight as the jury deemed wise and proper. The testimony of the defense witnesses not commented upon, as alluded to by appellant, consisted of the opinions of lay witnesses concerning appellant's physical condition, which subject was covered by reference to the testimony of appellant's physicians. It is submitted that the charge was not erroneous or prejudicial.

ARGUMENT

I.

The Trial Judge Did Not Err in Denying Appellant's Motion For Change of Venue Since She Did Not Make a Showing to the Court's Satisfaction That So Great a Prejudice Against Appellant Existed in the District of Columbia That She Could Not Obtain a Fair Trial.

With respect to Point I, appellee desires the Court to read the following pages of the reporter's transcript: 27, 28, 30.

Appellant before trial moved for a change of venue under Rule 21(a), F. R. Crim. P., with the request that the Court take judicial knowledge "of the fact that most Government workers are subject to security checks; and are subject to more or less preemptory firing if any question of loyalty arises." As an additional ground, appellant urged "a transfer of the proceedings to another district because of the publicity this matter has received in the local newspapers" (J. App. 10). The trial judge denied the motion on the ground that within the requirement of Rule 21(a) he was not satisfied so great a prejudice against the defendant existed in the District of Columbia that she

could not obtain a fair and impartial trial (J. App. 12). The trial judge further held that such publicity as had been given the case was of a general character and that no showing had been made that there would be more opportunity for a fair trial if the case were transferred outside the District of Columbia.

It is submitted that the Court's denial of this motion was not erroneous. A motion for change of venue is addressed to the trial judge's discretion. Since there was no showing to the Court's satisfaction that prejudice against appellant existed in the District of Columbia, the motion was properly denied. *Dennis v. United States*, 171 F. 2d 986, 84 U.S. App. D.C. 31, aff'd., 339 U.S. 162; *United States v. Lattimore*, 112 F. Supp. 507; *Eisler v. United States*, 176 F. 2d 21, 84 U.S. App. D.C. 404, cert. den., 337 U.S. 958.

Congress by statute has specifically decreed that federal and district government employees are qualified jurors in the District of Columbia. 11 D. C. Code, Sec. 1420. It has been settled by rulings of the Supreme Court and of this Court that government employees are legally qualified for jury service and that bias is not to be implied because of this relationship. Appellant, therefor, was not entitled to a change of venue merely because some members of the jury panel were federal employees. *Frazier v. United States*, 335 U. S. 497; *United States v. Wood*, 299 U. S. 123; *Smith v. United States*, 180 F. 2d 775, 86 U. S. App. D. C. 195; *Allen v. United States*, 4 F. 2d 688 (C. A. 7), cert. den. 267 U. S. 598.

Appellant's claim that the trial judge should have granted a motion for change of venue because of the publicity she received, is likewise considered to be without merit. No evidence was submitted that the publicity appellant received was unusual or sustained, or that it was of such a nature as to incite prejudice against her. Of about fifty person on the panels from which the petit jury was chosen (Tr. 28), only eleven had read anything about the case (Tr. 27). None of these had formed any opinion from what they had read (Tr. 30). Appellant's apprehension of

prejudice and inability to receive a fair trial was "based upon conjecture and speculation," and was, therefore, not a sufficient ground for change of venue. *United States v. Lattimore*, 112 F. Supp. 507 (D. C. D. C.); *United States v. Carper*, 13 F. R. D. 483, 487 (D. C. D. C.). See also *Finnegan v. United States*, 204 F. 2d 105 (C. A. 8); *Holt v. United States*, 218 U. S. 245; *United States v. Moran*, 194 F. 2d 623 (C. A. 2), cert. den. 343 U. S. 965; *Shushan v. United States*, 117 F. 2d 110 (C. A. 5), cert. den. 313 U. S. 574; *Stroble v. California*, 343 U. S. 181; *Delaney v. United States*, 199 F. 2d 107 (C. A. 1); *Shepherd v. Florida*, 341 U. S. 50; *Reynolds v. United States*, 98 U. S. 145.

It is submitted that the trial judge properly exercised his discretion in denying the motion for change of venue.

II.

The Trial Judge Did Not Err in Denying Appellant's Oral Motion For Continuance on the Day of Trial, Based Upon the Unavailability of a Witness Who Was Under Subpoena by Both Sides, Since Appellant Did Not Know and Made No Offer of Proof as to What the Witness' Testimony Would Be, Since It Appeared Obvious the Witness' Testimony Would Aid the Prosecution and Be Adverse to the Accused, Since the Appellant Failed to Exercise Her Right to Take the Witness' Deposition, and Since Appellant Was Convicted and Sentenced on Two Counts as to Which the Witness Could Not Have Given Relevant Testimony.

With respect to Point II, appellee desires the Court to read the following pages of the reporter's transcript: 3-10, 339-340, 392, 588-89, 848-49.

Appellant contends that the lower court erred in denying her oral motion for continuance, made the morning of trial, based upon the serious illness and unavailability of Walter R. Powell, Jr., who was under subpoena by both sides (Br. 12).

A month prior to Mrs. Natvig's "turnabout" testimony before the FCC on February 9 and 11, 1955, for which she was later indicted, Powell suffered a severe heart attack, and the representation of the Government in the FCC hear-

ing was taken over by Kittner and his associates (Tr. 848-49). Powell was obviously a key, if not essential, government witness to Count One, which assigned as perjurious that testimony of appellant stating that Powell coerced her to testify falsely. Powell was also an important government witness to Counts Three, Four, and Six, which assigned as perjurious that testimony of appellant denying that she had said certain things at her first meeting with Fitzpatrick, Leahy, and Powell on September 19, 1954. On April 11, 1955, Powell (then performing part-time duties as counsel for the National Association of Radio and Television Broadcasters), was subpoenaed by the prosecution in the hope that his physical condition would permit him to testify at the trial. Thereafter, he was also subpoenaed by the defense.

On May 2, 1955, the day before trial, a motion was made by Powell to quash the government and defense subpoenas served upon him, supported by the affidavit of his physician that the emotional stress of testifying in the case at that time might endanger his health, if not his life, but that if his condition continued to improve he might, without serious danger, testify in about sixty days (J. App. 13).

Upon instructions of the trial judge, Powell was immediately examined by a court-designated physician, Dr. Bernard J. Walsh, who submitted a report to the Court the morning of trial, May 3rd. Dr. Walsh concurred in the opinion of Powell's physician that Powell could not safely testify at that time, and estimated he might be able to testify in about four months (Tr. 5).

Appellant thereupon moved for a continuance in order that Powell might testify in the case (Tr. 3). Defense counsel conceded that Powell was a "government witness" and would be "hostile" to the defense (Tr. 3-4). Defense counsel argued that Powell's testimony might be helpful to the accused, but no offer of proof was made as to what his testimony would be (Tr. 4-5). It was pointed out by the prosecution, and not denied by the defense, that no one on behalf of the accused had questioned Powell about his prospective testimony, and that the hope of the accused that his testi-

mony would be helpful to her was fanciful speculation (Tr. 6). The Court below, one continuance already having been granted, denied the motion, but stated that, if desired, appellant could take Powell's deposition (Tr. 8-10). Appellant did not avail herself of this privilege.

The Government contends that the trial judge properly denied appellant's motion for continuance. Such a motion, of course, is addressed to the Court's discretion and should not be disturbed on appeal in the absence of abuse. *Isaacs v. United States*, 159 U. S. 487; *Avery v. Alabama*, 308 U. S. 444; *J. E. Hanger, Inc. v. United States*, 160 F. 2d 8, 81 U. S. App. D. C. 408.

It is well settled in this circuit that, "If the continuance is sought for the purpose of securing the attendance of witnesses, it must be shown who they are, what their testimony will be, that it will be relevant under the issues in the case and competent, that the witnesses can probably be obtained if the continuance is granted, and that due diligence has been used to obtain their attendance for the trial as set." *Neufield v. United States*, 118 F. 2d 375, 73 U. S. App. D. C. 174, cert. den. 315 U. S. 798.

The only comment of defense counsel which the Government feels even approached an offer of proof was the statement that Powell's presence was desired in order that he could be cross-examined on an affidavit filed by him with the FCC in which he admitted "contradicting" appellant's proposed testimony (Tr. 7). In appellant's brief it is stated that Powell was subpoenaed principally on the basis of this affidavit, which included remarks that Powell had "corrected" some of appellant's statements (Br. 12). However, no offer was made as to what the corrections were or what Powell's testimony would be. When the Government offered the affidavit in evidence, on the motion for continuance, prior to trial, the defense objected to its admission (Tr. 9-10). Evidently defense counsel had in mind Powell's attempts to refresh the recollection of appellant on dates and places that were hazy in her memory, which subject was covered in the cross-examination of Fitzpatrick (Tr. 588-89).

Certainly a trial should not be continued in order to permit defense counsel to cross-examine a prospective witness he anticipates will be called by the opposing side. And likewise it should not be granted to enable defense counsel to call a witness for direct examination when it is not shown what his testimony will be. Defense counsel could not even show that Powell would be available if a continuance were granted, since the examining physicians' opinions of his future ability to testify were conditioned upon whether he continued to improve. Furthermore, all but one of the counts to which Powell was a prospective witness were dismissed before or during the course of trial, so that appellant could not have been prejudiced on those counts because of his absence. The perjury assigned in Counts Seven and Eight was based upon appellant's denial of statements made to agents of the FBI before she ever saw or talked to Powell (Tr. 339-40; 392), and concerning which he could not have testified. As to Count Four, the lone count on which Powell could have testified, the testimony of Leahy and Fitzpatrick is convincing, and it is inconceivable that Powell's testimony would have aided appellant. However, even if Powell's testimony might have brought about an acquittal on Count Four, his absence was not prejudicial in view of the conviction on Counts Seven and Eight. Since the general sentence imposed upon all counts was within the maximum of each, the judgment should be affirmed if the conviction on any count was free from prejudicial error. *Hirabayashi v. United States*, 320 U. S. 81, 85; *Gorin v. United States*, 312 U. S. 19, 33; *Brooks v. United States*, 267 U. S. 432, 441.

III.

The Trial Court Did Not Erroneously Limit Appellant's Cross-Examination of Government Witnesses on the Issue of Credibility.

With respect to Point III, appellee desires the Court to read the following pages of the reporter's transcript: 165, 167-69, 197, 206, 207, 208, 210, 295, 565, 589.

Appellant contends that the trial judge erroneously prevented her from cross-examining government witnesses

about their knowledge, prior to appellant's appearance as an FCC witness, as to whether or not she had in fact been a Communist during the period in question (Br. 14). Appellant argues that such inquiry was proper cross-examination on the credibility of the witnesses, since, if they *knew* she had not been a Communist and, nevertheless, "presented her to a grand jury and an FCC hearing in spite of that," it would gravely affect their credibility (Br. 13-14). Appellant's argument implies an admission that the statements perjurally denied were in fact made by appellant, but that she should not be convicted because the witnesses to the perjury acted improperly.

In support of this argument, appellant cites references to the cross-examination of Agent Powers concerning appellant's son, which questions were answered by the witness (Tr. 165, 208, 210); to the attempted cross-examination of Agent Powers concerning whether or not the FBI investigated certain alleged Communists mentioned to him by appellant (Tr. 197); to the attempted cross-examination of Agent Schildecker concerning what questions he asked when interviewing Communists to determine whether or not they were genuine Communists (Tr. 295); to the attempted cross-examination of Fitzpatrick (relative to Count Three which was later dismissed) concerning whether or not other prospective witnesses were present in the Broadcast Bureau at the time of the first interview with appellant (Tr. 565); and to the attempted cross-examination of Fitzpatrick concerning whether or not investigations were conducted by the FCC to determine the whereabouts of a certain individual mentioned to him by appellant as being present at meetings she attended (Tr. 589). The balance of appellant's citations on this point do not involve rulings on the scope of cross-examination.

It seems to us that for many reasons appellant's argument is without merit. In the first place, insofar as Powers and Schildecker are concerned, it is based upon the false assumption that the FBI agents "presented" appellant as a witness before the grand jury and the FCC. (It may be appropriate at this point to state that appellant did not

testify before the grand jury which indicted her. Her grand jury testimony was given on September 30, 1954, in a matter not mentioned in the evidence in this case, a week prior to the first time she testified in the FCC hearing.) Agent Powers did not "present" appellant to the grand jury or to the FCC as a witness. He told her it was for her to decide whether she would testify, and appellant thereafter presented herself (Tr. 167-169). Agents Powers and Schildecker merely reported what appellant told them, and they did not evaluate such information or decide whether she would testify (Tr. 206).

Appellant's argument falsely assumes that her questions were designed to elicit evidence of whether or not the Government witnesses "knew" she had been a Communist. There was no inquiry into the witness' personal knowledge of her Communist membership. The only questions posed by appellant which seem to have any arguable tendency to elicit such evidence are those inquiring into what investigations were conducted by the FBI and the FCC into the activities of persons alleged by appellant to have been Communists. Agent Powers testified that the information furnished by appellant was sent by him to the Cleveland Office of the FBI for checking, and that he did not recall ever reading any reports from the Cleveland Office on the matter (Tr. 207).

It is evidently appellant's theory that if she claimed to have been a Communist Party member and to have associated with certain persons in the Communist Party, and upon interview those persons denied such associations, the federal employees reading reports of such investigations would be charged with knowledge that appellant had not been a Communist. However, it is well known that most Communists are loathe to implicate their associates, or themselves, in the Party or its activities. Even if such persons had been interviewed and denied that appellant was a Communist (which most emphatically is not admitted), their extrajudicial statements in the reports would amount to the rankest hearsay and could not conceivably be probative of the credibility of the government witnesses

as to the content of statements made to them by appellant.

The principal objection to such questions, however, is that they call for confidential security information. As a matter of public policy the Government should not be compelled to reveal, in the absence of sound reasons, the identity of alleged Communists who have been interviewed by its investigating agents or the details of any statements made by such persons. *United States v. Carter*, 15 F.R.D. 367 (D.C. D.C.).

There was no curtailment of legitimate cross-examination, and defense counsel was given wide latitude in probing into the facts elicited on direct examination, as well as the credibility of the witnesses. A general idea of the scope of examination is indicated by the fact that as to Powers there are ten transcript pages of direct examination (Tr. 138-148) and eighty-five pages of cross (Tr. 148-233); as to Schildecker there are twelve pages of direct (Tr. 234-46) and seventy-four pages of cross (Tr. 246-320); as to Leahy there are twenty-eight pages of direct (Tr. 335-63) and 135 pages of cross (Tr. 365-500); as to Fitzpatrick there are twenty-seven pages of direct (Tr. 504-25; 547-53) and 104 pages of cross (Tr. 553-657):

In *Lindsey v. United States*, 133 F. 2d 368, 77 U.S. App. D.C. 1, this Court laid down the following rule governing the limits of cross-examination:

In respect of such things as needless protraction, conduct of an examination in a manner unfair to a witness, undue inquiry into collateral matters to test credibility, and the like, cross-examination is properly within the discretion of the trial judge, and there can be no reversal except for abuse.

It is submitted that the trial judge did not abuse his discretion in prohibiting inquiry in cross-examination on the issue of credibility from extending unduly into collateral and confidential matters.

IV.

The Trial Court Did Not Err in Ruling That Upon Recall of Government Witnesses For Direct Examination by Appellant, Appellant Would Not Be Permitted to Cross-Examine Them Unless Hostility Were First Shown.

With respect to Point IV, appellee desires the Court to read the following pages of the reporter's transcript: 940-41, 1033.

Appellant alleges that the trial court erred in ruling that if government employees who had testified for the prosecution were later recalled by the defense for direct examination, the defense would not be permitted to cross-examine them unless hostility were shown (Br. 15).

The incident alluded to by appellant involves an abstract ruling by the trial judge with respect to witnesses who were to be called in the future (Tr. 940-41). It is not contended that the witnesses when called were hostile, evasive, or reluctant. Defense counsel was permitted to ask leading questions of these witnesses (Tr. 1033), and no complaint is made that counsel was not able fully to develop their testimony. Appellant does not show that she was prejudiced in any way by the Court's ruling. It is submitted that no prejudicial error was committed.

V.

The Court Did Not Err in Rulings on the Admissibility of Evidence.

A. The Court Did Not Err in Excluding from Evidence Investigative Reports of the FBI, and Testimony Concerning FCC Investigations, Offered to Prove That Appellant Had Not Been a Communist, Which Was Not an Issue in the Case.

With respect to Point VA, appellee desires the Court to read the following pages of the reporter's transcript: 128, 192, 274, 276, 1004, 1027.

Pursuant to appellant's subpoena *duces tecum*, the FBI reports concerning appellant were produced at the trial. On orders of the Court, the Government turned over to

the defense the reports made by Agents Powers and Schildecker of their interviews with appellant, which reports were used by the defense in the cross-examination of those witnesses (Tr. 128, 192, 274, 276). Subsequently, during the presentation of the appellant's case, defense counsel called to the stand Alan H. Belmont, Assistant Director, FBI, and asked if he had produced FBI records under the subpoena *duces tecum*. Belmont replied, "I have reports and communications relating, in part, to Marie Natvig." Defense counsel then stated, "I move the admission of all of those records, for the purpose of showing that Mrs. Natvig has never been a member of the Communist Party." (Tr. 1004). The Government's objection to the admission of the records was sustained by the trial judge, which action is here assigned as error (Br. 20).

Appellant also contends that she was erroneously prohibited from eliciting testimony from government employees tending to prove that she had not been a member of the Communist Party (Br. 20).

Appellant's citations of transcript pages reporting the Court's rulings on the admissibility of such evidence principally involve questions on cross-examination designed to attack credibility, which is covered in Point III, *supra*. The only reference to the exclusion of such evidence in appellant's case-in-chief relates to the FBI reports, discussed herein, and to questions of Fitzpatrick as to whether he attempted to find out if a Nathan Botwin had in fact introduced her to Lamb (Tr. 1027).

It is contended by the Government that the trial judge's rulings were proper on two grounds: First, that the evidence was incompetent for the purpose intended, and second, that it was irrelevant since whether or not the appellant had been a Communist was not in issue.

Defense counsel had not seen the FBI records which were offered in evidence and did not know what they contained. From Assistant Director Belmont's testimony, it appears that the records consisted of reports of interviews with persons concerning appellant, as well as others (Tr. 1004). The records undoubtedly consisted of hear-

say information which may or may not have related to appellant's membership in the Communist Party. It is believed there can be no question but that the competence of the evidence was not shown and that it was properly excluded.

Furthermore, the only issues in the case at the time the evidence was offered were whether appellant had perjurally denied making certain statements to FBI agents and FCC attorneys as alleged in Counts Four, Seven, and Eight. It has been held by this Court and by the Supreme Court, that where perjury is alleged to consist in whether certain statements were made, the truth of such statements is not in issue. *United States v. Harris*, 311 U.S. 292; *O'Brien v. United States*, 99 F. 2d 368, 69 U.S. App. D.C. 135, cert. den. 305 U.S. 562. The evidence offered, therefore, was without probative value in the case and was properly excluded.

Even if the truth of appellant's past membership in the Communist Party were in issue, however, the proffered evidence was incompetent. Certainly such membership cannot be proved by the hearsay reports in investigative files. Appellant called no witness to testify on that question from personal knowledge, and did not herself take the stand.

It is submitted that the exclusion from evidence of the FBI records and testimony mentioned was not erroneous.

B. The Court Did Not Err, on the Issue of Whether Appellant Willfully Gave False Testimony Before the FCC in February, 1955, in Excluding Evidence of Appellant's Experiences in October, 1954, Unrelated to Her Subsequent Mental Condition and Where No Evidence Was Adduced That Her Mental Condition in February, 1955, Was in Fact Defective

As to point VB, appellee desires the Court to read the following pages of the reporter's transcript: 460, 723-25, 750, 757, 814, 899-910, 919-22, 953, 958, 959, 961, 988, 993-1002, 1014, 1049-60.

Appellant contends that she attempted to demonstrate

on the trial that over a period of five months prior to February, 1955, she endured such disturbing experiences and was in such ill health that she was incapable of forming a willful intent to give perjured testimony at the time she testified in February. Appellant charges that the trial judge erroneously limited such evidence, however, to the month of February (Br. 16).

Appellant cites four pages of the transcript in support of this contention, pages 460, 910, 919, and 922. We believe the first reference is not in point because it involves the cross-examination of Leahy concerning two occasions on which he saw appellant, the questions being asked to attack credibility, further inquiry into which was excluded as being beyond the scope of the direct examination. The last reference is believed to be not in point because it involves the cross-examination of Kittner concerning whether the witness considered it improper for him to speak to appellant on February 25, two weeks after her FCC testimony, which was excluded as irrelevant.

The incident cited at page 910 of the transcript involves appellant's direct examination of Miss Phyllis Segal, an FCC stenographer. Miss Segal, who had not previously been on the stand, testified for the defense that she worked at the FCC on September 19, 1954, but did not see Mrs. Natvig; that she first saw Mrs. Natvig the day after the Milling Underwood incident when Mrs. Natvig started dictating a statement to her; that she thereafter saw Mrs. Natvig every day Mrs. Natvig was in town, either in the office or the hearing room; that the door to Powell's office opening on the corridor was kept locked, but the doors of the other men were locked and unlocked; that she was not detailed to accompany Mrs. Natvig and did not accompany her everywhere Mrs. Natvig went; that she did accompany Mrs. Natvig to the hearing room most of the times she was on the stand; that she accompanied Mrs. Natvig to the rest room on two occasions, once at Mrs. Natvig's request; that she had lunch with Mrs. Natvig twice; that everyone in Washington did not call her Mrs. Natvig's guard; that she did not recall a discussion of whether Mrs. Natvig was los-

ing weight or was nervous or upset; that she did not recall being in the drug store when Mrs. Natvig weighed herself and remarked that she had lost fourteen pounds; that she did not discuss with Mrs. Natvig whether the FCC attorneys would lose their jobs if they lost the *Lamb* case, and did not say, "this is all political"; that on one occasion Mrs. Natvig did not feel well enough to go on the stand, but she does not remember when it was; that Mrs. Natvig came to her office in February and asked for her voucher; that she advised Mrs. Natvig to see Kittner about how soon she could receive her money; that Mrs. Natvig called Reilly, of the Justice Department, while in her office and stated she wanted to see him before returning to Miami; that Mrs. Natvig received her witness fee the afternoon of February 25; that once in October she talked to Powell about whether to accompany Mrs. Natvig to the hearing room; that she does not recall how many times she accompanied Mrs. Natvig to the hearing room (Tr. 899-910).

At this point, when defense counsel began re-examining the witness about the number of times she accompanied appellant to the hearing room, the trial judge stated he would exclude such line of inquiry since it was irrelevant in the absence of Count One, although he would permit counsel to introduce evidence of Mrs. Natvig's mental condition (Tr. 910). It is apparent that the witness was adequately examined on this point and that appellant was not prejudiced by the prohibition against a repetition of the same matters.

The appellant's reference to transcript page 919 involves the direct examination of Kittner, in which the witness testified he did not recall Mrs. Natvig's making the statement she was no longer able to distinguish between fact and fiction (Tr. 919). Although the Court observed that the appellant's mental condition in the preceding December or September had nothing to do with the issues, defense counsel pursued the line of questioning without curtailment (Tr. 919-20), and, therefore, was not prejudiced by failure to adduce the desired evidence.

Appellant also refers to an offer of proof which was excluded (Br. 16; Tr. 1131-39), consisting of the testimony

of Arthur Schissel, an FCC attorney, and that of Mrs. Natvig's son and daughter-in-law. The defense offered to prove by these witnesses that Schissel accompanied Mrs. Natvig to New York and to Miami on orders of the FCC; that while in New York he visited Mrs. Natvig in her children's home; that Schissel stated to Mrs. Natvig and her children that Lamb was a menace to the country, that since Lamb had radio and television stations, he could beam in atom bombs by radio waves, and emanate death rays; that Schissel stated, generally, Lamb was a greater menace to the country than Alger Hiss or the Rosenbergs (Tr. 1136-37). This testimony was offered in proof of "the forces that were at work" on Mrs. Natvig, and which rendered her incapable of forming a willful intent to swear falsely under oath five months later. The trial court excluded the testimony on the ground that it was irrelevant to any issues in the case (Tr. 1137).

We believe the trial judge's rulings were not erroneous. Insofar as the testimony of Segal and Kittner is concerned, as cited in appellant's brief, the desired subjects were covered despite the Court's rulings, and appellant, therefore, was not prejudiced. Insofar as the offer of proof as to Schissel is concerned, it is impossible for us to see how the excluded testimony in any way could have been probative of the appellant's mental condition in February, 1955. Certainly a trip by Schissel with appellant to New York in October, 1954 (Tr. 1130), and a discussion of Lamb's being a menace to the country could not have had any tendency to prove that appellant was incapable of a willful intent to testify falsely in February, 1955, when she declared under oath that she had not made certain statements to the FBI agents in Miami and certain statements to the FCC attorneys in Washington prior to the time the trip with Schissel was made.

The Government does not question the rule that great latitude is allowed in admitting evidence to throw light on the mental condition of the accused where insanity is pleaded in defense. Appellant, however, specifically disclaimed insanity as a defense (Br. 16). It is, therefore,

doubtful that any evidence in support of appellant's contention was admissible, although the trial judge repeatedly ruled that he would admit evidence bearing on appellant's mental condition around the time of the alleged perjurious testimony (Tr. 953, 958, 959, 961).

Even where insanity is pleaded as a defense, however, the evidence to be admissible must reasonably justify an inference of insanity. *Lee v. State*, 234 P. 654, 30 Okla. Cr. 14; *State v. Douglas*, 278 S. W. 1016, 312 Mo. 373; *Foster v. State*, 52 N. E. 2d 358, 222 Ind. 133; *State v. Dunheene*, 32 S. E. 2d 322, 224 N. C. 738. And it is within the trial judge's discretion to exclude evidence that is too remote in point of time to have probative value. *Hart v. United States*, 130 F. 2d 456, 76 U.S. App. D. C. 193.

In addition to being remote, the evidence offered by appellant is beset with the larger defect of being incompetent. The excluded testimony consisted for the most part of whether external acts affecting appellant took place in September and October, 1954, such as whether she was accompanied to the hearing room by FCC employees, or was under surveillance by FCC employees, or whether certain words were spoken in her presence. Yet no evidence was adduced that appellant was mentally incompetent when she testified in February. Appellant did not testify in her own behalf. Defense witness Herbert Sharfman, FCC examiner, testified he did not notice anything unusual about appellant's manner or demeanor when she testified in February (Tr. 1014). Defense witness Russell M. Brown, attorney for Lamb at the FCC hearing, testified that during February, Mrs. Matvig appeared to be exercised and nervous, that she contracted a cold and appeared to be ill (Tr. 1060-61), and that he did not believe she had ever been rational (Tr. 1085). J. Howard McGrath, attorney for Lamb in the FCC hearings, testified that when Mrs. Natvig appeared on the stand February 9th at the FCC hearing she seemed much calmer and poised than at any time he had previously seen her on the stand (Tr. 1109). Other witnesses testified that following her appearance on the stand, the appellant was confined to her bed with a cold and sore throat and was

treated by physicians (Tr. 993-1002; 988; 921; 723-25; 750; 757; 814; 1149-1160).

The rule is that unless evidence is adduced, under a plea of insanity, that the accused suffered a diseased mental condition, evidence of circumstances which might be calculated to induce insanity is not admissible. Wigmore, Evidence, 3d Ed., Sec. 231, pp. 20-22, and cases cited; 22 C. J. S. Cr. Law Sec. 620(b).

The record fails to indicate at pages cited by the defense, or elsewhere, the exclusion of any evidence or line of inquiry concerning a mental or physical condition of appellant which could have had any reasonable tendency to affect her capacity to form an intent to give willful false testimony in February, 1955. Moreover, no further evidentiary foundation was laid to indicate that defendant was in fact in a defective mental condition in February. Hence, appellant's contention of error is no more than an assertion that inquiry was precluded respecting matters alleged to be causal, though not so apparent, of a result which itself was not evidenced.

It is therefore submitted that the trial court did not erroneously exclude evidence of appellant's physical or mental condition.

VI.

The Trial Judge Did Not Commit Prejudicial Error Because of Remarks Made in the Jury's Presence Concerning Evidence Offered by the Defense.

With respect to Point VI, appellee desires the Court to read the following pages of the reporter's transcript: 611, 684, 730-37, 754, 756, 801-02, 805, 909, 922, 1044-53, 1111-14, 1132, 1233-34, 1236, 1243-45.

Appellant contends that she was prejudiced because of remarks made by the trial judge in the jury's presence to the effect that the defense was "wasting time" and that some matters presented by the defense in direct and cross-examination were "unimportant or irrelevant" (Br. 17).

The first reference in appellant's brief is to the defense's cross-examination of Fitzpatrick concerning whether Miss

Segal was sitting outside Powell's office on September 23, 1954, and whether she was guarding the door of Powell's office (Tr. 611). The questions were answered. The prosecution objected to the line of inquiry as being beyond the scope of direct examination, but the trial court overruled the objection with the remark that while he thought a lot of it was unimportant, the matter inquired into was within the framework of the direct examination.

The second reference in appellant's brief is to the defense's direct examination of Miss Segal as to when and where the appellant received her witness fee on February 25, 1955, two weeks following the completion of her testimony before the FCC (Tr. 909). The Court remarked that the inquiry was directed to irrelevant matter and advised defense counsel to confine itself to relevant questions.

The third references in appellant's brief occurred during the defense's direct examination of Schissel when, without having adduced any relevant testimony, the defense attempted to attack the witness' credibility. The Court remarked that the line of inquiry would not be permitted, and asked if the defense was about ready to close its case. Defense counsel replied that, "we have just begun," and the trial judge remarked that he would not permit defense counsel to waste time in the way it had been wasted that afternoon and the latter part of the morning (Tr. 1132).

In making this comment, the trial court undoubtedly had reference to the defense's earlier direct examination of John Doerfer, FCC Commissioner, who was sought to be questioned on such matters as Lamb's fitness to receive a television license, the recommendations made by the Broadcast Bureau for the renewal of Lamb's license, and the provisions of the Federal Communications Act (Tr. 1044-53), all of which was excluded as irrelevant. The Court also undoubtedly had in mind the defense's direct examination of Smith Henley, FCC attorney, as to whether the FCC had an order prohibiting employees from talking to outside counsel except in the presence of an FCC attorney, as to how many days Henley had been in the court room at the instant trial, and whether he had consulted with the prose-

cuting attorneys (Tr. 1111-14), all of which was held to be irrelevant. While defense witnesses Brown and McGrath had testified prior to the time of the trial judge's questioned comment, he obviously did not characterize the defense's examination of them as a waste of time, since their testimony was admitted and was commented upon in the charge to the jury (Tr. 1243-44).

The appellant likewise complains of the trial judge's comment that there was no impropriety in Government attorneys talking to appellant, at her request, prior to indictment (Br. 17). Rex A. Collings, an attorney of the Department of Justice, testified that he and John F. Reilly, also a Department of Justice attorney, talked to Mrs. Natvig on February 23, 1955, at her request, two weeks after the alleged perjurious testimony was given, and that Mrs. Natvig informed them she was guilty of perjury, that her recent testimony before the FCC was false, that she was "willing to take her medicine" and wanted to appear and testify before the grand jury (Tr. 730-37). Collings testified that he informed Mrs. Natvig the case was being handled by Frank Cunningham, another attorney of the Department of Justice, that whether or not she appeared before the grand jury would be for the grand jury to decide, and that he would convey her request to Cunningham, who could present it to the grand jury (Tr. 731). Mrs. Natvig did not appear before the grand jury.

Upon cross-examination, Collings testified that at the beginning of the interview Reilly asked appellant whether she had counsel, and her reply indicated she was not sure whether Brown, attorney for Lamb, was her attorney or not (Tr. 754, 756). At that time grand jury proceedings had not been started, although Collings stated, "We had determined to present the matter to the grand jury" (Tr. 756). Defense counsel asked Collings whether or not, since appellant had not been advised by counsel, he felt it was proper to talk with her at that time in view of the fact there was a grand jury investigation beginning (Tr. 754). The trial judge had the question read back and then ruled, "I am going to exclude that. That is a matter of opinion, and

the Court sees no impropriety in it." This comment is assigned by appellant as prejudicial error.

Appellant likewise alleges that she was prejudiced by a similar comment made the following day during the defense's direct examination of Kittner, a former witness for the Government. Kittner, when previously called by the prosecution, had testified that at Mrs. Natvig's insistence, he and his associates talked with her on February 25, 1955; that before seeing her he asked appellant if she had counsel and was told that she did; that he then advised her to bring her attorney, but that appellant stated she would not be able to get in touch with her counsel until the late afternoon and insisted upon coming over immediately (Tr. 801-02). When called by the defense as its witness, Kittner was asked whether or not, since he knew appellant was represented by counsel, it occurred to him that there was an impropriety in talking to her when her counsel was not present (Tr. 922.) Objection was made that the question was irrelevant, and the Court ruled, "I don't think there is any impropriety. I don't like to have that insinuation stand as against a member of the bar. But I am sustaining the objection because the matter is not relevant." This comment is likewise charged to be prejudicial error. Appellant's theory seems to be that the question was directed at attacking the credibility, bias, and prejudice of the witness and that the Court's remark nullified such attack. The prohibition of inquiry into collateral matters to test credibility, especially that calling for the witness' opinions, is within the trial judge's discretion. *Lindsey v. United States*, 133 F. 2d 368, 77 U. S. App. D. C. 1.

We believe that defense counsel's questions carried such an invidious implication that the trial judge's comments were entirely proper for the protection of the witness and certainly not prejudicial. Neither Collings nor Kittner was guilty of even the hint of impropriety in talking to appellant under the circumstances involved. Despite defense counsel's suggestion to the contrary, appellant was not an "adverse party" as contemplated by Canon 9 of the Canon of Ethics adopted in 1947 by the American Bar Association.

Grand jury proceedings had not been instituted at the time of these conversations, and the indictment herein was not returned until March 7, 1955.

Additionally, when Collings talked to appellant on February 23, 1955, there is no evidence that appellant was represented by counsel. Certainly she was not represented by Brown (Tr. 684). At the time Kittner spoke to appellant on February 25 she was not under indictment, and, in any event, Kittner had nothing to do with the decision to prosecute, or the prosecution of appellant, beyond appearing as a witness. Furthermore, on March 2, 1955, appellant again talked to Kittner *in the presence of her counsel* and repeated her previous admissions (Tr. 805).

The comments mentioned occurred on different days in the course of a nine-day trial. It seems far fetched to suggest that such passing remarks were in any way prejudicial, since they were innocuous in content as well as context. The judge fully instructed the jury in his charge that it was the sole judge of the facts and that the Court's comments were not binding on the jury (Tr. 1233-34, 1236, 1244-45). In analogous cases such comments have been held to be not prejudicial error. *Fook v. United States*, 164 F. 2d 716, 82 U. S. App. D. C. 391, cert. den. 333 U. S. 838; *Pfaff v. United States*, 85 F. 2d 309 (C. A. 6); *Ford v. United States*, 10 F. 2d 339 (C. A. 9), aff'd. 273 U. S. 593; *United States v. Stayback*, 212 F. 2d 313 (C. A. 3), cert. den. 348 U. S. 911. Also see *Mendelson v. United States*, 58 F. 2d 532, 61 U. S. App. D. C. 127; *Ochoa v. United States*, 167 F. 2d 341; *Simon v. United States*, 123 F. 2d 80, 83 (C. A. 4), cert. den. 314 U. S. 694; *Pacman v. United States*, 144 F. 2d 562, 563 (C. A. 9), cert. den. 323 U. S. 786. In *Pacman*, supra, the Court made the following appropriate comment:

As to the judge's comments of which appellant complains, they were of trifling consequence. They exhibited no more than a natural impatience with the extensive amount of time being consumed in the trial of an uncomplicated case. There was nothing in what the court said which could be taken by the jury as in-

dicative of an attitude of prejudice toward the defendant, his counsel, or his cause.

VII.

The Trial Court Did Not Give a Prejudicial and "Unbalanced" Charge to the Jury.

With respect to Point VII, appellee desires the Court to read the following pages of the reporter's transcript: 790-91, 810-16, 994-95, 1001-02, 1085-86, 1213, 1244, 1246-47.

The Court, in commenting on the evidence, recited the medical testimony adduced by the defense indicating that "ten" days after testifying in the case the appellant received medical treatment for a sore throat, bad cough, and acute bronchitis. Upon exception by appellant, the number of days involved was changed, in a supplemental instruction, from "ten" to "nine." (Tr. 1244, 1247). This was the only exception taken to the charge, although defense counsel remarked that the Court had neglected to mention the testimony of a Mr. Graves, house detective at the Woodner Hotel, to the effect that when he accompanied Kittner to Mrs. Natvig's hotel room on February 17, Mrs. Natvig "appeared to be quite ill." The Court remarked that he had done better than mention the opinion of a layman, and had given the professional opinion of the appellant's physicians (Tr. 1246). Only passing reference was made in defense counsel's closing argument to Grave's testimony, and it was evidently not considered evidence of importance (Tr. 1213).

In appellant's brief it is now alleged that the Court erred in not commenting on Graves' testimony concerning "three Government witnesses who, uninvited, invaded her bedroom at night to talk with her (Br. 19). There is no evidence that the attorneys "invaded" the appellant's room or were "uninvited." The evidence was that Kittner, and his associates, went to Mrs. Natvig's hotel room on the evening of February 17, 1955, at Mrs. Natvig's request (Tr. 790-91; 810-16). Graves, who accompanied Kittner to Mrs. Natvig's room, testified that appellant appeared to be ill

and was coughing, that she was examined by a physician during their visit, and that after the doctor gave the appellant medication he stated she was then in as good condition as anyone to be interviewed, but would later become drowsy (Tr. 994, 995, 1001-02). It is impossible for us to see how the Court's failure to comment on this evidence could have prejudiced the appellant.

Appellant also complains that the Court did not comment upon the testimony of Russell M. Brown, counsel for Lamb, to the effect that he considered appellant irrational at all times (Tr. 1085-86). Such a lay opinion by Brown, having no evidentiary value, standing alone, is not believed to be worthy of special mention by the Court, and certainly a failure to mention it should not be prejudicial error. The Court did mention Brown's testimony about what he observed of Mrs. Natvig's physical condition (Tr. 1244).

The trial judge has a broad discretion in selecting the evidence for comment in his charge. He cannot be required to comment upon every bit of evidence which either party may consider favorable to its cause. *Allis v. United States*, 155 U.S. 117, 124. The fact that the trial court takes longer to summarize the evidence of the prosecution, which is more voluminous than the relevant evidence of the defense, does not establish that the Court placed undue emphasis on the prosecution's evidence. *Wheeler v. United States*, 165 F. 2d 225, 82 U.S. App. D.C. 363, cert. den. 333 U.S. 829. Where the Court's charge substantially covers the evidence in a fair and impartial manner, it is not error to refuse requested instructions for additional comment. *May v. United States*, 175 F. 2d 994, 84 U.S. App. D.C. 233, cert. den. 338 U.S. 830; *United States v. Bayer*, 331 U.S. 532.

It is, therefore, submitted that the trial judge did not commit prejudicial error in his charge to the jury.

CONCLUSION

The evidence of guilt in this case is overwhelming. The testimony of the two witnesses to each count of the indictment was not contradicted. The defense was based essentially upon an attack on the credibility of the Government's

witnesses and upon the incapacity of the appellant to form a willful intent at the time the offense was committed, on which points all relevant and competent evidence was considered and rejected by the jury. It is, therefore, our sincere belief that if any error was committed in this trial, it was unprejudicial and harmless.

For the foregoing reasons, it is respectfully submitted that the judgment of conviction on all counts should be affirmed.

LEO A. ROVER,
United States Attorney,
J. FRANK CUNNINGHAM,
Attorney, Criminal Division,
Department of Justice.
MICHAEL J. ANTONELLIS,
Attorney, Criminal Division,
Department of Justice.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

April Term 1955

No. 12,758

MARIE NATVIG, ... APPELLANT,

vs.

THE UNITED STATES OF AMERICA, ... APPELLEE.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

*United States Court of Appeals
For the
District of Columbia Circuit*

FILED SEP 21 1955

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Joseph W. Stewart
CLERK

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JOINT APPENDIX

United States District Court

for the

DISTRICT OF COLUMBIA

Division

No. 12756

United States Court
of Appeals
for the
District of Columbia
Circuit

UNITED STATES OF AMERICA)

) Criminal

v.

MARIE NATVIG)

) No. 207-55

FILED June 24, 1955

Joseph W. Stewart
Clerk

1. Indictment for

PERJURY

Filed

(18, U.S.C., 1621)

March 7, 1955

2. Arraignment

March 11, 1955

3. Plea to indictment

Not Guilty

March 11, 1955

4. Motion to withdraw plea of guilty denied

-- 19

5. Trial by jury,

May 3, 1955

6. Verdict of guilt Guilty on Counts 4, 7 and 8

May 16, 1955

7. Judgment--(with terms of sentence) Eight (8) months to Two (2) years.

HOLTZOFF, J. Entered

June 20, 1955

Judgment & Commitment filed

June 20, 1955

8. Notice of appeal filed

June 24, 1955

Dated

June 24, 1955

Attest

HARRY M. HULL

Clerk.

/S/ By: Margaret H. Esser

Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
Holding a Criminal Term

FILED IN OPEN COURT
MAR 7 - 1955
HARRY M. HULL, Clerk

(Grand Jury Impaneled on August 2, 1954, sworn in on August 3, 1954)

UNITED STATES OF AMERICA)	Grand Jury Original.
v.)	Criminal No. 207-55
MARIE NATVIG)	Perjury - 18 U.S.C. 1621

THE GRAND JURY CHARGES:

COUNT I

1. That on or about February 9, 1955, in the District of Columbia and within the jurisdiction of this Court, MARIE NATVIG, the defendant herein, having taken an oath that she would testify truly before a competent officer, to wit, before Herbert Sharfman, presiding as the duly authorized hearing examiner for the Federal Communications Commission, which was then conducting an official hearing as authorized by law into a matter entitled "In re: Application of Dispatch, Inc., Erie, Pennsylvania, for renewal of license of television station WICU, docket number 11,048, file No. BRCT-42," in which case a law of the United States authorized an oath to be administered, did unlawfully, willfully, and knowingly, and contrary to said oath, state material matter which she did not believe to be true, that is to say:

Dismissed - - -> 2. That at the time and place aforesaid the defendant, duly appearing as a witness before the said Herbert Sharfman, presiding as hearing examiner for the Federal Communications Commission in the aforesaid matter, and then and there being under oath as aforesaid, testified to material matters before the said Herbert Sharfman in said hearing in answer to questions propounded to her, as follows:

Q. How do you explain your prior testimony?

A. I mean to fully negate my prior testimony,

but I did not wilfully give false testimony.

I was coerced into doing it.

Q. Are you able to tell us, Mrs. Natvig, who coerced you?

A. Mr. Powell.

Mr. Kittner: Mr. Examiner --

Mr. R. Brown: Do you mean Mr. Walter J. Powell,

the Broadcast Bureau's counsel?

The Witness: Yes.

3. That the aforesaid testimony of the defendant was false and untrue, in that, as she then and there well knew and believed, the defendant had not been coerced into giving prior false testimony in the aforesaid hearing by Walter R. Powell, Jr., counsel, Broadcast Bureau, Federal Communications Commission.

Violation 18 U.S.C. 1621.

COUNT II

1. The Grand Jury realleges all of the allegations of paragraph No. 1 of the first count of this indictment.

2. That at the time and place aforesaid the defendant, duly appearing as a witness before the said Herbert Sharfman, presiding as hearing examiner for the Federal Communications Commission in the aforesaid matter, and then and there being under oath as aforesaid, testified to material matters (1258) before the said Herbert Sharfman in said hearing in answer to questions propounded to her, as follows:

Q. How did Mr. Powell induce you to testify that you had been a Communist?

A. He said that he had information from the Cleveland Police Department to the effect that I had been a Communist.

Q. And did he say anything about what would happen if you denied it?

A. Yes, that if I had been a Communist, and said that I was not, that it would be perjury.

3. That the aforesaid testimony of the defendant was false and untrue, in that, as she then and there well knew and believed, Walter R. Powell, Jr., counsel, Broadcast Bureau, Federal Communications Commission, did not induce defendant to testify in the aforesaid hearing that she had been a Communist by saying to her, in substance, that he had information from the Cleveland Police Department to the effect that she had been a Communist and that, if she had been a Communist and said she was not, it would be perjury.

Violation 18 U.S.C. 1621.

COUNT III

Dismissed

1. The Grand Jury realleges all of the allegations of paragraph No. 1 of the first count of this indictment.

2. That at the time and place aforesaid the defendant, duly appearing as a witness before the said Herbert Sharfman, presiding as hearing examiner for the Federal Communications Commission in the aforesaid matter, and then and there being under oath as aforesaid, testified to material matters (1259) before the said Herbert Sharfman in said hearing in answer to questions propounded to her relative to her meeting with Walter R. Powell, Jr., Thomas B. Fitzpatrick and Robert D. J. Leahy of the Federal Communications Commission on September 19, 1954, as follows:

Q. Did Mr. Powell make any statements to you in the presence of Messrs. Fitzpatrick and Leahy?

A. Not that I can remember, Mr. Kittner.

Q. Just where were you at the time he made these remarks to you?

A. Room 7522.

Q. Do you recall the particular positions of the people in the room at the time this statement was given you?

A. According to my recollection, it was just Mr. Powell and myself in the room all the time, and at times Mr. Leahy would come into the room and at times Mr. Fitzpatrick was there, although I don't believe that Mr. Fitzpatrick was there for any length of time.

3. That the aforesaid testimony of the defendant was false and untrue, in that, as she then and there well knew and believed, the defendant on September 19, 1954, did meet and confer in Washington, D. C., with Walter R. Powell, Jr., and Thomas B. Fitzpatrick, counsel, and Robert D. J. Leahy, business accountant, Broadcast Bureau, Federal Communications Commission, for a continuous period of approximately three hours, during substantially all of which time Powell, Fitzpatrick, and Leahy were in the room with her and during which time Powell made statements to her in the presence of Fitzpatrick and Leahy.

Violation 18 U.S.C. 1621.

COUNT IV

(1260)

1. The Grand Jury realleges all of the allegations of paragraph No. 1 of the first count of this indictment.

2. That at the time and place aforesaid the defendant, duly appearing as a witness before the said Herbert Sharfman, presiding as hearing examiner

for the Federal Communications Commission in the aforesaid matter, and then and there being under oath as aforesaid, testified to material matters before the said Herbert Sharfman in said hearing in answer to questions propounded to her relative to her meeting with Walter R. Powell, Jr., Thomas B. Fitzpatrick and Robert D. J. Leahy of the Federal Communications Commission on September 19, 1954, as follows:

Q. Mrs. Natvig, did you, during the course of this meeting, and in connection with your discussion of the matter then pending before the Commission -- this proceeding -- did you at that time advise Mr. Powell, Mr. Fitzpatrick and Mr. Leahy that you had been a member of the Communist Party, that you had known Mr. Lamb in that connection, and that you had in fact consorted with him?

A. No.

3. That the aforesaid testimony of the defendant was false and untrue, in that, as she then and there well knew and believed, the defendant on September 19, 1954, told Walter R. Powell, Jr., and Thomas B. Fitzpatrick, counsel, and Robert D. J. Leahy, business accountant, Broadcast Bureau, Federal Communications Commission, in substance, that she had been a member of the Communist Party in Cleveland, Ohio, from 1934 until 1937; that in connection with her activities in the Communist Party during this period she met and knew Edward Lamb, and that she had in fact associated and consorted with Edward Lamb during this period.

Violation 18 U.S.C. 1621.

(1261)

COUNT V

1. The Grand Jury realleges all of the allegations of paragraph No. 1 of the first count of this indictment.

Dismissed -----> 2. That at the time and place aforesaid the defendant, duly appearing as a witness before the said Herbert Sharfman, presiding as hearing examiner for the Federal Communications Commission in the aforesaid matter, and then and there being under oath as aforesaid, testified to material matters before the said Herbert Sharfman in said hearing in answer to questions propounded to her, as follows:

Q. Then you subsequently came to Washington to talk with the FCC at their request, is that correct?

A. Yes

Q. When you came to them, did you or did you not tell them that you were a Communist or had been a Communist?

A. I said I was not.

* * * * *

The Presiding Officer: Is it your testimony that you had told the Commission people you had never been a Communist?

The Witness: That is right.

The Presiding Officer: Is that the purport of your answer?

The Witness: That is right.

The Presiding Officer: All right.

3. That the aforesaid testimony of the defendant was false and untrue, in that, as she then and there well knew and believed, the defendant on the occasion of her first meeting with Walter R. Powell, Jr., and Thomas B. Fitzpatrick, counsel, and Robert D. J. Leahy, business accountant, Broadcast Bureau, Federal Communications Commission on September 19, 1954, told them in substance that she had been a Communist and a member of the Communist Party in Cleveland, Ohio, from 1934 until 1937, and did not tell them that she had never been a Communist.

Violation 18 U.S.C. 1621

(1262)

COUNT VI

1. That on or about February 11, 1955, in the District of Columbia and within the jurisdiction of this Court, MARIE NATWIG, the defendant herein, having taken an oath that she would testify truly before a competent officer, to wit, before Herbert Sharfman, presiding as the duly authorized hearing examiner for the Federal Communications Commission, which was then conducting an official hearing as authorized by law into a matter entitled "In re: Application of Dispatch, Inc., Erie, Pennsylvania, for renewal of license of television station WICU, docket number 11,048, file No. BRCT-42," in which case a law of the United States authorized an oath to be administered, did unlawfully, willfully and knowingly and contrary to said oath, state material matter which she did not believe to be true, that is to say:

2. That at the time and place aforesaid the defendant, duly appearing as a witness before the said Herbert Sharfman, presiding as hearing examiner for the Federal Communications Commission in the aforesaid matter, and then and there being under oath as aforesaid, testified to material matters before the

said Herbert Sharfman in said hearing relative to her original conversation with Walter R. Powell, Jr. concerning certain meetings which she had attended at the Deschler Hotel in Columbus, Ohio, and at the Sherman House in Chicago, Illinois, as follows:

The Presiding Officer: What meetings, Mrs. Natvig?

The Witness: This meeting with Mr. Lamb.

The Presiding Officer: What organization is this supposed to be?

Mr. R. Brown: She hasn't characterized the meeting.

The Presiding Officer: That is what I would like to find out. (1263)

The Witness: In my original talks with Mr. Powell, I said that I didn't remember who sponsored those meetings, who called them, and it was because I said, on questioning by Mr. Powell, that there were some people who told me they were Communists there, that they might have been Communist meetings, and so that appeared in my, either typewritten notes or in my tape recording.* * *.

3. That the aforesaid testimony of the defendant was false and untrue, in that, as she then and there well knew and believed, the defendant on September 19, 1954, in her original talk in Washington, D. C., with Walter R. Powell, Jr., counsel, Broadcast Bureau, Federal Communications Commission, did tell him, in substance, that during 1934 to 1937, while a member of the Communist Party, she and Edward Lamb attended three meetings at the Deschler Hotel in Columbus, Ohio, and one meeting at the Sherman House, Chicago Illinois, which were sponsored by the Communist Party.

Violation 18 U.S.C. 1621.

COUNT VII

1. The Grand Jury realleges all of the allegations of paragraph No. 1 of the first count of this indictment.

2. That at the time and place aforesaid the defendant, duly appearing as a witness before the said Herbert Sharfman, presiding as hearing examiner for the Federal Communications Commission in the aforesaid matter, and then and there being under oath as aforesaid, testified to material matters before the said Herbert Sharfman in said hearing in answer to questions propounded to her relative to her meetings on September 15 and 21, 1954 with Edward J. Powers, Special Agent in Charge, Miami field office, Federal Bureau of Investigation, as follows:

Q. Now, at either of these meetings with Mr. Powers did you tell him that you had been a member of the Communist Party as you previously testified here; that you knew Mr. Lamb in that capacity, and that you had, in fact consorted with him?

A. Not to my recollection.

Q. Are you in a position to state that you did not?

A. Yes.

3. That the aforesaid testimony of the defendant was false and untrue, in that, as she then and there well knew and believed, the defendant had at meetings on September 15, 1954, and September 21, 1954, with Edward J. Powers, Special Agent in Charge, Miami field office, Federal Bureau of Investigation, told Powers, in substance, that she had been a member of the Communist Party in Cleveland, Ohio, from 1934 to 1936; that during 1934 to 1936 she met Edward Lamb and in that period knew him as a Communist Party member in Ohio; that during this period she consorted with and associated with Edward Lamb at business and social meetings.

Violation 18 U.S.C. 1621.

COUNT VIII

1. The Grand Jury realleges all of the allegations of paragraph No. 1 of the first count of this indictment.

2. That at the time and place aforesaid the defendant, duly appearing as a witness before the said Herbert Sharfman, presiding as hearing examiner for the Federal Communications Commission in the aforesaid matter, and then (1265) and there being under oath as aforesaid, testified to material matters before the said Herbert Sharfman in said hearing in answer to questions propounded to her, as follows:

Q. Do you recall approximately how long your first meeting with Mr. Powers lasted?

A. Not exactly. I don't think that it was of an extended duration.

Q. Could you say approximately? You were there, you say, approximately 8 o'clock in the morning.

A. No.

Q. No. That was the telephone call. But getting back to your meeting with Mr. Powers, could you say approximately how long that meeting lasted?

A. No, and I would prefer not to guess.

Q. Did you tell Mr. Powers at that time that Mr. Lamb--that you had been a member of the Communist party?

A. No.

3. That the aforesaid testimony of the defendant was false and untrue, in that as she then and there well knew and believed the defendant had on September 15, 1954, at her first meeting with Edward J. Powers, Special Agent in Charge, Miami field office, Federal Bureau of Investigation, told Powers in substance that she had been a member of the Communist Party in Cleveland, Ohio, from 1934 to 1936.

Violation 18 U.S.C. 1621.

COUNT IX

Dismissed.

1. The Grand Jury realleges all of the allegations of paragraph No. 1 of the first count of this indictment. (1266)

2. That at the time and place aforesaid the defendant, duly appearing as a witness before the said Herbert Sharfman, presiding as hearing examiner for the Federal Communications Commission in the aforesaid matter, and then and there being under oath as aforesaid, testified to material matters before the said Herbert Sharfman in said hearing in answer to questions propounded to her relative to her meeting on September 15, 1954 with Edward J. Powers, Special Agent in Charge, Miami field office, Federal Bureau of Investigation, as follows:

Q. Let me ask you this: At what time, when you talked with Mr. Powers, was there any discussion concerning your willingness or unwillingness to talk with Members of the F.C.C. or its staff?

A. Oh, yes--

Q. I am sorry. I didn't mean to interrupt.

A. Mr. Powers told me he would have to transmit the information on the teletype immediately, and that I would be contacted by the F.C.C.

Q. Now, you discussed with Mr. Powers that possibility, and did you indicate a willingness to talk with the members of the F.C.C. if they called, or staff?

A. Mr. Powers at that time asked me whether I would be willing to go to Washington and testify in the hearing, and I said, "No, under no circumstances would I do so."

3. That the aforesaid testimony of the defendant was false and untrue, in that as she then and there well knew and believed the defendant had on September 15, 1954, at her first meeting with Edward J. Powers, Special Agent in Charge, Miami field office, Federal Bureau of Investigation, told Powers in substance that she would be willing to go to Washington, D. C. and testify in the aforesaid hearing if she could do so under an assumed name or anonymously.

Violation 18 U.S.C. 1621.

(1267)

A TRUE BILL

/S/ Royal T. Harris
Foreman

/S/ LEO A. ROVER
United States Attorney

/S/ J. FRANK CUNNINGHAM
Special Assistant to the Attorney General

March 7, 1955

United States District Court for the District of Columbia

(1268)

United States

vs.

Marie Natvig

Defendant

F I L E D

Mar 11, 1955

Harry M. Hull, Clerk

Criminal No. 207-55

Charge Perjury

On this 11th day of March, 1955, the defendant Marie Natvig, appearing in proper person and by her attorney Jean Dwyer, being arraigned in open Court upon the indictment, the substance of the charge being stated to him, pleads Not Guilty thereto.

The defendant is released in the custody of her counsel, Jean Dwyer, for the purpose of making bond.

By direction of

Present:	/S/ David A. Pine
United States Attorney	Presiding Judge
	Criminal Court# 5
/S/ By Harold Titus	HARRY M. HULL, Clerk
Assistant United States Attorney	
/S/ D. Harrison	/S/ By Wm. Collins, J.
Official Reporter	Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

(1278)

FILED

APR 4 1955

UNITED STATES OF AMERICA	)	Harry M. Hull
v.	) Criminal Action No. 207-55	Clerk
MARIE NATVIG	)	

MOTION FOR A CHANGE OF VENUE

Comes now the defendant by her attorney, and respectfully moves this Honorable Court to transfer the proceedings, particularly the trial, in this cause to another district. For reason therefor, she directs this Court's attention to the fact that the juries, or jury panels, in this jurisdiction are composed of a majority of Government workers. It is asserted that in a case such as this, involving Government officials directly, and a defendant who at one time attended Communist meetings, it will be impossible to obtain an impartial jury from a panel so composed.

Counsel request that the Court take note of the fact that most Government workers are subject to security checks; and are subject to more or less peremptory firing if any question of loyalty arises. The position of the defense is perfectly expressed in the dissenting opinion in the Frazier case (335 U.S. 497), and the dissent in the Eisler case (84 U.S. App. D.C. 404).

Counsel believe that a voir dire in this connection will be of no assistance, for two reasons. The first is that few jurors would wish to admit that there jobs are such as could be jeopardized in this fashion; the second

is that the mere mention of the matter during the voir dire would serve to focus attention on that possibility.

In addition the Court is requested to order a transfer of the proceedings to another district because of the publicity this matter has received in the local newspapers. This is more fully set out in the Motion for Continuance which is also filed herein.

DWYER & DWYER

/S/ By: Jean F. Dwyer
602 Fifth Street, N.W.
Counsel for defendant

Served personally, 4/4/55.

Jean F. Dwyer

United States District Court for the District of Columbia (1303

F I L E D

UNITED STATES

vs.

Marie Matvig

Defendant

APRIL 18, 1955

HARRY M. HULL, CLERK

Criminal No. 207-55

Charge Perjury

On this 18th day of April, 1955, came the attorney of the United States; the defendant in proper person and by her attorney, Jean Dwyer; whereupon the motion of the defendant to dismiss counts of the indictment, coming on to be heard, after argument by counsel, is by the Court granted as to Counts Two and Five and denied as to the remaining Courts.

By direction of

/S/ Alexander Holtzoff
Presiding Judge
Criminal Court # 4

HARRY M. HULL, Clerk

Present:

United States Attorney

/S/ By Daniel J. Mancoboni
Deputy Clerk

/S/ By J. Frank Cunningham
Assistant United States Attorney

Evelyn Sweeney
Official Reporter

F I L E D

APR 18, 1955

HARRY M. HULL, CLERK

UNITED STATES

vs.

/S/ Marie Natvig

Defendant

Criminal No. 207-55

Charge Perjury

On this 18th day of April, 1955, came the attorney of the United States; the defendant in proper person and by her attorney, Jean Dwyer; whereupon the motion of the defendant for a change of venue, coming on to be heard, after argument by counsel, is by the Court denied.

By direction of

/S/ Alexander Holtzoff

Presiding Judge

Criminal Court # 4

HARRY M. HULL, Clerk

/S/ By Daniel J. Mencoboni

Deputy Clerk

Present:

United States Attorney

/S/ By J. Frank Cunningham

Assistant United States Attorney

/S/ Evelyn Sweeney

Official Reporter

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

(1312)

UNITED STATES OF AMERICA)
)
vs.)
)
MARIE NATVIG

Crim. No. 207-55

F I L E D

May 2, 1955

HARRY M. HULL, CLERK

MOTION TO QUASH

SUBPOENAS

Upon the attached certificate of Clayton B. Ethridge, M. D., dated April 29, 1955, the undersigned attorneys for Walter Powell, Jr. hereby move the Court for an Order quashing the subpoenas heretofore issued herein on the applications of the plaintiff and defendant and served upon him, the said Walter Powell, Jr., and commanding him to appear on the 3d day of May, 1955, at 9:30 o'clock A. M. to testify herein.

PEHLE, LESSER, MANN, RIEMER & LUXFORD

/S/ By Laurence S. Lesser

A Member of the Firm
Attorneys for Walter Powell, Jr.
1210 Eighteenth Street, N. W.
Washington 6, D. C.

PLEASE TAKE NOTICE:

The within motion will be presented to the Court, Honorable Alexander Holtzoff, United States District Court Judge, as a preliminary matter at 10:00 o'clock, A. M. or as soon thereafter as counsel can be heard, on the 2d day of May, 1955.

PEHLE, LESSER, MANN, RIEMER & LUXFORD

/S/ By Laurence S. Lesser

A Member of the Firm
Attorneys for Walter Powell, Jr.
1210 Eighteenth Street, N. W.
Washington 6, D. C.

TO: Leo A. Rover, Esq.

United States Attorney for
the District of Columbia
United States Court House
Washington, D. C.

T. Frank Cunningham, Esq.

Special Assistant to the
Attorney General

Department of Justice
Washington 25, D. C.

Attorneys for the plaintiff

Jean F. Dwyer, Esq.
602 Fifth Street, N. W.
Washington, D. C.
Attorney for the defendant
2 copies received this 29th day of April, 1955.

(1313)

LEO A. ROVER
T. FRANK CUNNINGHAM
Attorneys for Plaintiff

/S/ By Clara F. Harris

Copy received this 29th day of April, 1955.

JEAN DWYER
Attorney for Defendant

/S/ By Jean F. Dwyer

CLAYTON B. ETHRIDGE, M.D.
915 - 19th Street, N. W.
Washington 6, D. C.
Republic 7-4600

(1314)

Internal Medicine
Cardiology

April 29, 1955

TO WHOM IT MAY CONCERN:

This is to certify that Mr. Walter Powell, Jr. of 3412 Quebec Place, N.W., Washington, D.C., has come under my medical observation in my capacity as a cardiac consultant since the occurrence of an acute heart attack which he experienced on or about February 4, 1955.

While Mr. Powell's recovery from his heart attack has now progressed to the point where it is permissible for him to return to his work, part time, for light duties only, it is my professional judgement that his recovery has not progressed to the point where he can safely engage in any strenuous activity or in any activity which may involve any emotional stress. It is my professional opinion that it would be particularly unsafe and might endanger Mr. Powell's health, if not his life, for him to appear as a witness in court at this time or in the immediate future. Providing Mr. Powell's condition continues to improve as it has up to now, he should, in my opinion, be able to appear as a witness in court without serious danger to his health in about sixty days.

/S/ Clayton B. Ethridge, M.D.
Clayton B. Ethridge, M.D.

District of Columbia) ss.
City of Washington)

On this 29th day of April 1955, there personally appeared before me Clayton B. Ethridge, M.D., to me known, who acknowledged that he signed and executed the above certificate.

/S/ Lorraine D. Basich
Notary Public My Commission
Expires June 14, 1956

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

(1315)

UNITED STATES OF AMERICA)

v.)

MARIE NATVIG)

Crim. N . 207-55

F I L E D

MAY 3, 1955

Harry M. Hull, Clerk

ORDER

A motion having been made on behalf of Walter Powell, Jr., to quash subpoenas issued herein on the applications of the plaintiff and the defendant commanding said Walter Powell, Jr. to appear on the third day of May 1955 at 9:30 o'clock A.M. to testify herein; and

There having been submitted to the Court in support of such motion a certificate of Clayton B. Ethridge, M.D., dated April 29, 1955, that in his opinion the health of said Walter Powell, Jr. is such that it might endanger his health, ~~if-not-his-life~~, for him to appear as a witness in Court at this time, and Bernard J. Walsh, M.D. having on May 2, 1955, examined the said Walter Powell, Jr. at the direction of the Court and it appearing from his report of such examination, dated the same day, submitted to the Court, that the condition of said Walter Powell Jr.'s health is such that it would be ~~tetally~~ unwise to require him to appear as a witness in Court at this time;

In consideration of the premises, counsel for the plaintiff, for the defendant and for said Walter Powell, Jr., having been heard, it is

ORDERED this third day of May, 1955, that said subpoenas be, and they hereby are quashed.

/s/ By Alexander Holtzoff
United States District Judge.

Submitted by

PEHLE, LESSER, MANN, RIEMER & LUXFORD

/S/ By Lawrence S. Lesser
A Member of the Firm
Attorneys for Walter Powell, Jr.
1210 Eighteenth Street, N.W.
Washington 6, D. C.

PLEASE TAKE NOTICE: The above-proposed Order will be submitted (1316) to the Court, Honorable Alexander Holtzoff, United States District Judge, for signature, in accordance with his ruling in open Court on May 3, 1955.

PEHLE, LESSER, MANN, RIEMER & LUXFORD
/S/ By Lawrence S. Lesser
A Member of the Firm
Attorneys for Walter Powell, Jr.
1210 Eighteenth Street, N. W.
Washington 6, D. C.

TO: Leo A. Rover, Esq.

(1316)

United States Attorney for
the District of Columbia

United States Court House
Washington, D. C.

T. Frank Cunningham, Esq.
Special Assistant to the

Attorney General
Department of Justice
Washington 25, D. C.

Attorneys for the plaintiff

Jean F. Dwyer, Esq.
602 Fifth Street, N. W.
Washington, D. C.

Attorney for the defendant

Copy received this 3rd day of May, 1955.

/S/ J. F. Cunningham

LEO A. ROVER

T. FRANK CUNNINGHAM

Attorneys for Plaintiff

By _____

Copy received this 3rd day of May, 1955.

JEAN DWYER

Attorney for Defendant

By Jean F. Dwyer

United States District Court for the District of Columbia

(1317)

UNITED STATES)

vs.)

Marie Natvig)

Defendant)

Criminal No. 207-55

Charge Perjury

F I L E D

May 3, 1955

Harry M. Hull, Clerk

On this 3rd day of May, 1955, came the attorney of the United States; the defendant in proper person and by her attorneys, Jean F. Dwyer and John J. Dwyer, Esquire; whereupon the motion of the witness, Walter Powell, Jr., to quash subpoena, coming on to be heard, after argument by counsel, is by the Court granted.

By direction of

/S/ Alexander Holtzoff
Presiding Judge

Criminal Court # 4

HARRY M. HULL, Clerk

Present:

(1317)

United States Attorney

J. Frank Cunningham

By Michael J. Antonellis
Assistant United States Attorney

/S/ By Daniel J. Mencoboni
Deputy Clerk

Evelyn Sweeney
Chloe MacReynolds

Official Reporter

United States District Court for the District of Columbia (1318)

UNITED STATES)

vs.)

MARIE NATVIG)

Defendant

Criminal No. 207-55

Charge Perjury

F I L E D

May 16, 1955

Harry M. Hull, Clerk

On this 16th day of May, 1955, came again the parties aforesaid, in the manner as aforesaid, and the same jury as aforesaid in this cause, the hearing of which was respited Thursday; whereupon after the arguments of counsel and the instructions of the Court, the alternate jurors are discharged from further consideration in the case, and the jury retires to consider their verdict.

The jury returns into court and upon their oath say that the defendant is guilty on counts 4, 7, and 8 and thereupon each and every member of the jury is asked if that is his or her verdict and each and every member thereof says that the defendant is guilty on counts 4, 7, and 8 of the indictment.

The case is referred to the Probation Officer of the Court and the defendant is permitted to remain on bond pending sentence.

Present:

By direction of

United States Attorney

/S/ Alexander Holtzoff
Presiding Judge

/S/ By Frank Cunningham
Assistant United States Attorney

Criminal Court # 4

E. Sweeney
Official Reporter

HARRY M. HULL, Clerk

/S/ By John N. Hess
Deputy Clerk

(1320)

Judgment and Commitment (Rev. 7-52)

Cr. Form No. 25

United States District Court

For the

DISTRICT OF COLUMBIA

United States of America)

vs.)

Marie Natvig)

Criminal

No. 207-55

F I L E D

June 20, 1955

Harry M. Hull, Clerk

On this 20th day of June, 1955 came the attorney for the (1320)
government and the defendant appeared in person and¹ by counsel, John J. Dwyer,
Esquire

IT IS ADJUDGED that the defendant has been convicted upon her plea of²
not guilty and a verdict of guilty of the offense of

Violation of Section 1621, Title 18 of the United States Code

as charged³ in Counts 4, 7, and 8 and the
court having asked the defendant whether he has anything to say why judgment
should not be pronounced, and no sufficient cause to the contrary being shown
or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of
the Attorney General or his authorized representative for imprisonment for a
period of⁴

Eight (8) months to Two (2) years

IT IS ORDERED that the Clerk deliver a certified copy of this judgment
and commitment to the United States Marshal or other qualified officer and
that the copy serve as the commitment of the defendant.

/s/ Alexander Holtzoff
United States District Judge.

Clerk.

¹ Insert "by counsel" or "without counsel; the court advised the defend-
ant of his right to counsel and asked him whether he desired to have counsel
appointed by the court, and the defendant thereupon stated that he waived the
right to the assistance of counsel." ² Insert (1) "guilty," (2) "not guilty,"
and a verdict of guilty," (3) "not guilty, and a finding of guilty," or (4)
"nolo contendere," as the case may be. ³ Insert "in count(s) number

" if required. ⁴ Enter (1) sentence or sentences, specify-
ing counts if any; (2) whether sentences are to run concurrently or consecu-
tively, when each term is to begin with reference to termination of preceding
term or to any other outstanding or unserved sentence; (3) whether defendant
is to be further imprisoned until payment of the fine or fine and costs, or
until he is otherwise discharged as provided by law. ⁵ Enter any order with
respect to suspension and probation. ⁶ For use of Court wishing to recommend
a particular institution.

United States District Court for the District of Columbia

UNITED STATES OF AMERICA)

vs.)

Marie Natvig)

Criminal No. 207-55

F I L E D

Jun 24, 1955

Harry M. Hull, Clerk

NOTICE OF APPEAL

Name and address of appellant

Marie Natvig - D. C. Jail

Name and address of appellant's attorney

Dwyer & Dwyer - 602 - 5th N. W.

Offense Perjury

Concise statement of judgment or order, giving date, and any sentence

Guilty - 8-24 months, 6/20/55

Name of institution where now confined, if not on bail

D. C. Jail

I, the above-named appellant, hereby appeal to the United States Court of Appeals for the District of Columbia Circuit from the above-stated judgment.

Date 6/2/55

/S/ Marie Natvig
Appellant

/S/ Jean F Dwyer
Attorney for Appellant.